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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/828,744

04/20/2004

Tracy E. Grim

GRIM3001/JJC/KDW

5476

23364 7590 12/21/2010

BACON & THOMAS, PLLC

625 SLATERS LANE

FOURTH FLOOR

ALEXANDRIA, VA 22314-1176

EXAMINER

NELSON, KERI JESSICA

ART UNIT

PAPER NUMBER

3772

MAIL DATE

DELIVERY MODE

12/21/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/828,744	GRIM ET AL.	
	Examiner	Art Unit	
	KERI J. NELSON	3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 September 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6,9-11,14,15,18,20-29 and 40-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6,9-11,14,15,18,20-29 and 40-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

This Office action is in response to the Appeal Brief filed September 29, 2010. Claims 6, 9-11, 14, 15, 18, 20-29, and 40-50 are currently pending.

Reopening Prosecution

1. In view of the Appeal Brief filed on September 29, 2010, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then Appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

/Patricia Bianco/

Supervisory Patent Examiner, Art Unit 3772.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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3. Claims 6, 25, 40-42, and 44 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention.

4. Claims 6, 25, and 40 each recite the limitation “the injured part of the patient’s anatomy”; however, there is insufficient antecedent basis for “the injured part” or “the patient” in the claim. For examination purposes, the above limitation has been interpreted as “an injured part of a patient’s anatomy”.

5. Claims 6, 25, and 40 each recite the limitation “insufficient strength to rigidly immobilize the splint for long-term use”; however, the terms “insufficient strength”, “rigidly immobilize”, and “long-term use” are relative terms and render the claims indefinite. Further, other than the tacking arrangement being non-woven, knitted, woven, foam, low-profile, stretchable, and/or tearable, Applicant has not disclosed any suitable material possessing the above qualities (i.e., “insufficient strength to rigidly immobilize the splint for long-term use”). Therefore, as best can be understood from the specification, the above limitation is attributed to the use of straps having temporary tacking arrangements such as hook and loop fastening arrangements, adhesive, snaps, hooks, or any other suitable arrangement (pages 2-3, ¶ 13-14; pages 4-5, ¶ 30 & 33; page 11, ¶ 53). For examination purposes, the above limitations have been given their broadest reasonable interpretation such that the phrase “long-term use” has been interpreted as an indefinite length of time that the primary tacking arrangements must therefore be of insufficient strength to permanently or indefinitely hold the blank in place.

6. Claims 41 and 42 each recite the limitation “a padding material”; however, claim 40, from which claims 41 and 42 each depend, also recites “a padding material” such that is unclear if the padding material recited in claims 41 and 42 is intended to be directed to the same padding material as recited in claim 40 or a second and/or third padding material.

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7. Claim 44 recites the limitation "said hook received material"; however, there is insufficient antecedent basis for this limitation in the claim. For examination purposes, "said hook received material" has been interpreted as "said hook receivable material" as previously recited in claim 40, from which claim 44 depends.

8. Claims 9-11, 14, 15, 18, 20-24, 26-29, 43, and 45-50 are also rejected under 35 U.S.C. 112, second paragraph, for depending from rejected base claim.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 6, 9, 10, 14, 18, 20-22, and 25-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Darcy (US Patent 6,106,492), in view of Henderson et al. (US Patent Pub. 2002/0193718), and in further view of Krantz et al. (US Patent Pub. 2002/0022108). Darcy discloses an efficient splint or support comprising an orthopedic blank (14) impregnated with hardenable material (24) and having an outer surface covered with a hook receivable material (16) and a padding layer (20) on at least one side thereof; a primary tacking arrangement (26) for holding the blank in place on an injured part of a patient's anatomy in a manner that still allows adjustment of the blank with respect to the anatomy; and secondary holding arrangements (34) including a resilient, flexible, stretchable tape forming an exo-skeletal structure provided over the primary tacking arrangement and the blank capable of functionally securing the blank in place on the patient after the blank has been activated and properly mounted on the patient; wherein the primary tacking arrangement comprises a plurality of strips

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of material (28) adapted to receive a hook patch (32) on an opposed end portion extending laterally from the blank; and wherein the splint or support may be easily and properly mounted on the patient (Figs. 5-12; column 5, line 52 – column 6, line 19; column 7, lines 5-40). Although Darcey does not expressly teach that the primary tacking arrangement is of insufficient strength to rigidly immobilize the splint for long-term use, it is noted that “long-term use” is relative such that the primary tacking arrangements of the splint taught by Darcey may not be capable to immobilize the splint indefinitely and may therefore be of insufficient strength to rigidly immobilize the splint for long-term use as required by the claim language. It is further noted that the claims are also rejected under 35 U.S.C. 112, second paragraph, since the limitation “insufficient strength to rigidly immobilize the splint for long-term use” is unclear. However, Darcey fails to teach that the orthopedic blank is non-rectangular in shape and formed of double knit spacer type material and that the primary tacking arrangement is removable and repositionable at any location along an axial length of the blank.

Henderson discloses a splint (15) comprising an non-rectangular orthopedic blank (10) formed of double knit spacer type material impregnated with hardenable material capable of fitting a specific portion of the anatomy and having an outer surface or covering (60) covered with hook receivable material and a padding layer (52) on at least one side thereof; and a primary tacking arrangement (strip of hook and loop tape) capable of holding the blank in place on an injured part of a patient's anatomy in a manner that may still allow adjustment of the blank with respect to the anatomy; wherein the hook receivable material on the outer surface of the blank is capable of receiving hook types patches of the strip such that the primary tacking arrangement is capable of being removed and repositioned at any location along an axial length of the blank; wherein the orthopedic blank has a non-rectangular shape to fit a specific portion of the anatomy; and wherein the splint or support may be easily and properly mounted on the

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patient (Figs. 1A & 12; pages 2-3, ¶ 24-28; pages 4-5, ¶ 35 & 42-43). Although Henderson does not expressly teach that the primary tacking arrangement is of insufficient strength to rigidly immobilize the splint for long-term use, Henderson does teach that that the hook and loop tape provides temporary aid to hold the orthopedic support in place such that it clearly is not intended for indefinite use (page 3, ¶ 28). At the time the invention was made, it would have been obvious to one having ordinary skill in the art to modify the orthopedic blank taught by Darcey to be formed of double knit spacer type material as taught by Henderson since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. Further, it would have been obvious to one having ordinary skill in the art to modify the primary tacking arrangement of splint taught by Darcey to utilize a hook and loop tape as also taught by Henderson for the purpose of providing greater ease of use for the person applying the primary tacking arrangements about the blank. However, the combination of Darcey and Henderson fails to expressly teach that the primary tacking arrangement comprises a strip of non-woven, stretchable, tearable, and low-profile material having hook type patches on opposed end portions.

Krantz discloses a strip of hook and loop tape (100) comprising non-woven material and having opposed end portions with hook type patches (125') secured on the opposed end portions, wherein the non-woven material may be adapted to receive the hook type patches and wherein the strip is stretchable, tearable, low profile, and of insufficient stretch to rigidly immobilize a splint for long-term use (Figs. 5-7; page 1, ¶ 7; page 2, ¶ 10; page 6, ¶ 100 & 103; page 7, ¶ 107-110; page 8, ¶ 117). At the time the invention was made, it would have been obvious to one having ordinary skill in the art to substitute the strip of hook and loop tape of the splint taught by the combination of Darcey and Henderson for a nonwoven, stretchable, and

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tearable strip of hook and loop tape taught by Krantz since both strips of hook and loop tape will perform equally well, and with predictable results, the function of providing temporary aid to hold the orthopedic support in place.

11. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Darcey in view of Henderson and Krantz as applied to claim 6 above, and in even further view of Bolla et al. (US Patent 6,039,706). The combination of Darcey / Henderson / Krantz discloses the invention substantially as claimed, as described above, but fails to teach an additional piece arranged to extend through a web space between a thumb and forefinger of the patient for assisting in the location of the splint or support on the forearm of the patient. Bolla discloses a splint (29) comprising an additional piece (32) arranged to extend through the wedge between the user's thumb and index finger capable of assisting in the location of the splint on the forearm of the user (Fig. 4A; column 6, lines 36-56). At the time the invention was made, it would have been obvious to one having ordinary skill in the art to modify the splint taught by the combination of Darcey / Henderson / Krantz to include an additional piece arranged to extend through a web space between a thumb and forefinger as taught by Bolla for the purpose of helping to secure the splint on a hand or forearm.

12. Claims 15 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Darcey in view of Henderson and Krantz as applied to claims 6 and 25 above, and in even further view of Grim et al. (US Patent 6,139,513). The combination of Darcey / Henderson / Krantz discloses the invention substantially as claimed, as described above, but fails to expressly teach that the strip of the primary tacking arrangements are non-rectangular in shape. Grim discloses a splint comprising a blank (202) and non-rectangular primary tacking

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arrangement (204) comprising a plurality of extensions extending laterally from the blank (Figs. 17-18; column 3, line 65 – column 4, line 12; column 6, lines 43-61). At the time the invention was made, it would have been obvious to one having ordinary skill in the art to modify the primary tacking arrangement of the splint taught by the combination of Darcey / Henderson / Krantz to be non-rectangular in shape as taught by Grim for the purpose of removing any potentially irritating corners of the primary tacking arrangement.

13. Claims 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Darcey in view of Henderson and Krantz as applied to claim 6 above, and in even further view of Schlogel (US Patent 5,195,944).

14. Regarding claim 23, the combination of Darcey / Henderson / Krantz discloses the invention substantially as claimed, as described above, but fails to teach that the blank has slits along the length of the splint. Schlogel discloses a splint (1/1') comprising slits (10/10') along the length of the splint capable of reducing bulk after molding (Figs. 1-3; column 2, line 63 – column 3, line 20; column 4, lines 14-27). At the time the invention was made, it would have been obvious to one having ordinary skill in the art to modify the splint taught by the combination of Darcey / Henderson / Krantz to include slits along the length of the splint as taught by Schlogel for the purpose of enabling the blank to easily be folded to appropriately conform the anatomy of the user.

15. Regarding claim 24, the combination of Darcey / Henderson / Krantz discloses the invention substantially as claimed, as described above, but fails to teach an anti-flexion strap. Schlogel discloses a splint (1/1') including an anti-flexion strap (20) capable of increasing support (Figs. 1-3; column 3, lines 33-68; column 4, lines 28-32). At the time the invention was made, it would have been obvious to one having ordinary skill in the art to modify the splint

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taught by the combination of Darcey / Henderson / Krantz to include a anit-flexion strap as taught by Schlogel for the purpose of supporting the injured part in a fixed position during the healing process.

16. Claims 40-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Darcey (US Patent 6,106492), in view of Henderson et al. (US Patent Pub. 2002/0193718), in further view of Krantz et al. (US Patent Pub. 2002/0022108), and in even further view of Grim et al. (US Patent 6,139,513).

17. Regarding claims 40-42 and 44-47, Darcey discloses an efficient splint or support comprising an elongate blank (14) impregnated with hardenable material (24) including multiple layers of casting material (24A-24F) and having a first side covered with a padding material (20) and a second side covered with a hook receivable material (16); a laterally extending primary tacking arrangement (26) for holding the blank in place on an injured part of a patient's anatomy in a manner that still allows adjustment of the blank with respect to the anatomy; and secondary holding arrangements (34) provided over the primary tacking arrangement and capable of functionally securing the blank in place on the patient after the blank has been activated and properly mounted on the patient; wherein the hook receivable material on the second side of the blank is capable of receiving a hook type patch (32) on the primary tacking arrangement; and wherein the splint or support may be easily and properly mounted on the patient (Figs. 5-12; column 5, line 52 – column 6, line 19; column 7, lines 5-40). Although Darcey does not expressly teach that the primary tacking arrangement is of insufficient strength to rigidly immobilize the splint for long-term use, it is noted that "long-term use" is relative such that the primary tacking arrangements of the splint taught by Darcey may not be capable to immobilize the splint indefinitely and may therefore be of insufficient strength to rigidly immobilize the splint

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for long-term use as required by the claim language. It is further noted that the claims are also rejected under 35 U.S.C. 112, second paragraph, since the limitation “insufficient strength to rigidly immobilize the splint for long-term use” is unclear. However, Darcey fails to teach that the orthopedic blank is non-rectangular in shape, formed of double knit spacer type material, and includes at least one layer of additional non-impregnated material on at least one side thereof and that the primary tacking arrangement is removable and repositionable at any location along an axial length of the blank.

Henderson discloses a splint (15) comprising an non-rectangular orthopedic blank (10) formed of double knit spacer type material impregnated with hardenable material capable of fitting a specific portion of the anatomy and having at least one layer of additional non-impregnated padding material (40, 42) on at least one side thereof, a first side covered with a padding material (52), and a second side covered with unbroken loop fabric (60); and a primary tacking arrangement (strip of hook and loop tape) capable of holding the blank in place on an injured part of a patient's anatomy in a manner that may still allow adjustment of the blank with respect to the anatomy; wherein the hook receivable material on the outer surface of the blank is capable of receiving hook types patches of the strip such that the primary tacking arrangement is capable of being removed and repositioned at any location along an axial length of the blank; wherein the orthopedic blank has a non-rectangular shape to fit a specific portion of the anatomy; and wherein the splint or support may be easily and properly mounted on the patient (Figs. 1A & 12; pages 2-3, ¶ 24-28; pages 4-5, ¶ 35 & 42-43). Although Henderson does not expressly teach that the primary tacking arrangement is of insufficient strength to rigidly immobilize the splint for long-term use, Henderson does teach that that the hook and loop tape provides temporary aid to hold the orthopedic support in place such that it clearly is not intended for indefinite use (page 3, ¶ 28). At the time the invention was made, it would have been

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obvious to one having ordinary skill in the art to modify the orthopedic blank taught by Darcey to be formed of double knit spacer type material as taught by Henderson since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. Further, it would have been obvious to one having ordinary skill in the art to modify the splint taught by Darcey to include an additional layer as also taught by Henderson for the purpose of providing greater durability and support. Still further, it would have been obvious to one having ordinary skill in the art to modify the primary tacking arrangement of splint taught by Darcey to utilize a hook and loop tape as further taught by Henderson for the purpose of providing greater ease of use for the person applying the primary tacking arrangements about the blank. However, the combination of Darcey and Henderson fails to expressly teach that the primary tacking arrangement comprises a strip of non-woven, stretchable, tearable, and low-profile material having hook type patches on opposed end portions.

Krantz discloses a strip of hook and loop tape (100) comprising non-woven material and having opposed end portions with hook type patches (125') secured on the opposed end portions, wherein the non-woven material may be adapted to receive the hook type patches and wherein the strip is stretchable, tearable, low profile, and of insufficient stretch to rigidly immobilize a splint for long-term use (Figs. 5-7; page 1, ¶ 7; page 2, ¶ 10; page 6, ¶ 100 & 103; page 7, ¶ 107-110; page 8, ¶ 117). At the time the invention was made, it would have been obvious to one having ordinary skill in the art to substitute the strip of hook and loop tape of the splint taught by the combination of Darcey and Henderson for a nonwoven, stretchable, and tearable strip of hook and loop tape taught by Krantz since both strips of hook and loop tape will perform equally well, and with predictable results, the function of providing temporary aid to hold the orthopedic support in place. However, the combination of Darcey / Henderson / Krantz fails

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to expressly teach that the elongate blank is in roll form and that the tacking arrangements are non-rectangular in shape.

Grim discloses an elongate blank (114) in roll form (Fig. 8; column 6, lines 5-6). At the time the invention was made, it would have been obvious to one having ordinary skill in the art to modify the splint taught by the combination of Darcey / Henderson / Krantz such that the blank is in roll form as taught by Grim so that the blank may be dispensed in lengths suitable for any given medical use. Further, Grim discloses a splint comprising a blank (202) and non-rectangular primary tacking arrangement (204) comprising a plurality of extensions extending laterally from the blank (Figs. 17-18; column 3, line 65 – column 4, line 12; column 6, lines 43-61). At the time the invention was made, it would have been obvious to one having ordinary skill in the art to modify the primary tacking arrangement of the splint taught by the combination of Darcey / Henderson / Krantz / Grim to be non-rectangular in shape as further taught by Grim for the purpose of removing any potentially irritating corners of the primary tacking arrangement.

18. Regarding claim 43, the combination of Darcey / Henderson / Krantz / Grim discloses the invention substantially as claimed, as described above, and Henderson further teaches that the padding material covering the first side of the blank may be any padding material. Although the combination of Darcey / Henderson / Krantz / Grim but fails to expressly teach that the padding material is a double knit fabric, such material is well known in the art and it would have been obvious to one having ordinary skill in the art to modify the padding material of the splint taught by the combination of Darcey / Henderson / Krantz / Grim to be made of a double knit fabric since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

In re Leshin, 125 USPQ 416.

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19. Claims 48 and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Darcey in view of Henderson and Krantz as applied to claims 6 and 25 above, and in even further view of Parker et al. (US Patent 5,755,678). The combination of Darcey / Henderson / Krantz discloses the invention substantially as claimed, as described above, but fails to teach that the non-woven material of the primary tacking arrangement is hydrophobic. Parker discloses the use of hydrophobic fibers in medical wrapping material (Figs. 4-5; column 7, lines 34-40). At the time the invention was made, it would have been obvious to one having ordinary skill in the art to modify the non-woven material of the primary tacking arrangement of the splint taught by the combination of Darcey / Henderson / Krantz to be hydrophobic as taught by Parker since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

20. Claim 50 is rejected under 35 U.S.C. 103(a) as being unpatentable over Darcey in view of Henderson, Krantz, and Grim as applied to claim 40 above, and in even further view of Parker et al. (US Patent 5,755,678). The combination of Darcey / Henderson / Krantz / Grim discloses the invention substantially as claimed, as described above, but fails to teach that the non-woven material of the primary tacking arrangement is hydrophobic. Parker discloses the use of hydrophobic fibers in medical wrapping material (Figs. 4-5; column 7, lines 34-40). At the time the invention was made, it would have been obvious to one having ordinary skill in the art to modify the non-woven material of the primary tacking arrangement of the splint taught by the combination of Darcey / Henderson / Krantz / Grim to be hydrophobic as taught by Parker since it has been held to be within the general skill of a worker in the art to select a known material on

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the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Response to Arguments

21. Applicant's arguments filed September 29, 2010 have been considered but are moot in view of the new ground(s) of rejection. However, the arguments with respect to Darcey still pertinent to the current rejection of claims 6, 25, and 40 have been addressed below.

22. In response to Applicant's argument that the straps of the splint taught by Darcey are strong enough for long-term use, the examiner notes that "long-term use" is a relative term based on the intended use of the device. As also discussed above in this Office action with respect to the rejection of claims 6, 25, and 40 under 35 U.S.C. 112, second paragraph, the terms "insufficient strength", "rigidly immobilize", and "long-term use" have not been specifically defined in Applicant's specification and the only specific structure disclosed for the primary tacking arrangement is the use of straps having temporary tacking arrangements such as hook and loop fastening arrangements, adhesive, snaps, hooks, or any other suitable arrangement (pages 2-3, ¶ 13-14; pages 4-5, ¶ 30 & 33; page 11, ¶ 53). Therefore, the phrase "long-term use" has been given the broadest reasonable interpretation such that it has been interpreted as an indefinite length of time such that the primary tacking arrangements must therefore be of insufficient strength to permanently or indefinitely hold the blank in place.

23. In response to Applicant's arguments that it would not have been obvious to one having ordinary skill in the art to modify the straps of the splint taught by Darcey to be weaker and that there are unexpected results from the use of weaker straps, the examiner notes that the current rejection does not rely on making the straps of Darcey weaker but rather modifying the material to be a non-woven, stretchable, tearable, and low profile material as required by the particular

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structure of the claim language for the purpose of providing greater ease of use for the person applying the primary tacking arrangements about the blank and since both material for straps will perform equally well, and with predictable results, the function of holding the orthopedic support in place.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KERI J. NELSON whose telephone number is 571-270-3821. The examiner can normally be reached on Monday - Thursday, 9am-4pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco, can be reached on 571-272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KJN
/KERI J. NELSON/
Examiner, Art Unit 3772
12/15/2010

/Patricia Bianco/

Supervisory Patent Examiner, Art Unit 3772